1949.

File No. O. Village Panchayat 49

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Bombay Village Panchayats Act 1933

P=110
F

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L.D.P.I.No. 763dt. 17-1-49.

Submitted with reference to R & L.C.D. note at 2. In pursuance of a resolution passed by the District Local Board Poona recommending the removal of Mr. B... Kandalkar Sarpanch Grampanchayat, Kawathe (on the grounds that he had retained some amount belonging to the village fund inspite of specific instructions to the contrary), the President, while applying to the Collr. of Poona for sanction under sec.21 of the Bom. Village Panchayats Act, 1933 suspended him. In para 6 his letter to the Collr. the President had brought out specific charges against the Mr. Kandalkar. In this connection, the Collr. of Poona in his letter at p.1 ante states that there is no provision in the B...P. Act, 1933 regarding suspension of a sarpanch or member pending his removal from office under sec. 21 of the Act and hence he inferred the President that his action was incorrect. The R.& L.C.D. thinks that the Board's action in suspending the sarapanch is irregular. The P.L.A. has been requested to advise.

Office of the P.L.A.

Suspension of the sarpanch by the District Local Board.

The Bombay Village Panchayats Act, 1933.

sec. 21.

The resolution of the District Local Board suspending the sarpanch, Rawa'he is not warranted by law.

Sd/-

Remembrancer of Legal Affairs.

U.O. to H.& L.C.L., No. 913 dated the 25th Jan. 1940.

M.V.D.
15/6
4c.

L.I. F.'.No. 14936 dt. 11.11.48.

ubmitted with reference to H. & L.C.., note at page 1•2 ante.

2. By his No. V.I. 61 dated 24-4-48 the Collector sanctioned an increase of Pay from Rs. 35 to Rs.75/- of the Village Panchayat ecretary, Kalwad. The President D.L.B., H.T.L. has now approached the Collector stating that Govt. is liable to pay ⅓ths of the increased salary according to section 33(2) of the Bombay Village Panchayats Amendment Act 1947. In this respect the Commissioner H.D. is of the view that the maximum amount of Rs.35/- prescribed, for the purpose of Govt.grant-in-aid under Govt. notification No. 174/10 dated 31-7-42 is still in force. In that case the panchayat would be entitled to a grant-in-aid equal to ⅓th of Rs.35/- in view of the amendment of section 33 of the Bombay Village Panchyat Act 1933. The H.& L.G.D. is of the view that since the rules to be prescribed by Govt. regulating conditions of service, remuneration etc. have not been sanctioned the Village Panchayats like Kalwad cannot legally claim ⅓th of any sanctioned by the Collector, as Govt. has authorised a pay of Rs.35 for V.. ecys, ordinarily strictly speakingo the V.I. would be entitled to ⅓th of X Rs. 35/- as stated by the Comar. As Govt. were, however, bearing the entire salary & dearness allowance of V.P. ecy., Govt. may continue to bear untill the V.I. ecys.,C conditions of service rules are published finally. That Deptt. requests V.I. to advise whether the view taken is correct.

N.V.D.
15/8
40.

Office of the P.L.A.

Bombay Village Panchayats Act, 1933, sec. 33(3)

Salary of a village Panchayat Secretary.

The view taken by the Health and Local Govt. Department in para. 2 of its office note at page 1 ante appears to be correct.

Under section 33(3) of the Bombay Village Panchayats Act, 1933, as amended by Act LX of 1947, every Secretary of a panchayat in office on the date of coming into operation of the Bombay Village Panchayats (Amendment) Act, 1947, shall be deemed to have been appointed under sub-section(1). Sub-section (1) provides that every panchayat shall appoint a Secretary who shall be a servant of the panchayat and his qualifications, powers, duties, remuneration and conditions of service including disciplinary matters shall be such as may be prescribed. Since the rules framed under section 108 clause (e1) regarding qualifications, powers, duties, remuneration and conditions of service were framed before the Bombay Village Panchayats (Amendment) Act LX of 1947 came into operation, they are no longer effective (see P.L.A. opinion No. 8110, dated 25-8-1948). The sanction given by the Collector, Thana, in virtue of delegated powers for the increase of the salary of the Secretary of the Panchayat of Mulund subject to the condition that the Panchayat agreed to pay the difference from its own fund would not be valid particularly because the Panchayat is unwilling to pay the difference. Consequently the remuneration payable to the Secretary of Mulund would be the remuneration which was payable to him on the date on which the Bombay Village Panchayats (Amendment) Act LX of 1947 came into operation, that is to say, Rs. 35/- per month, and Government would be liable to pay 3/4th of the said remuneration under sub-section(2) of section

33 until the new rules regulating the remuneration, conditions of service etc, are framed by Government. Since, however, Government were bearing the entire salary and dearness allowance of a village panchayat secretary before the said amendment act came into operation, it would be proper that Government should bear the same burden until new rules are framed notwithstanding section 33(2).

-S/-

Remembrancer of Legal Affairs.

V.P. to H. & L.S.D. No. 498 Dated 14th January 1949.

H.V.D.
15/6
4c.

Office of the E.I.A.

Bombay Village Panchayats Act, Sec.89.

Railway(Local Authorities Taxation) Act. Sec. 3(1).

Govt. of India Act Sec. 154.

Unless a notification is issued by the Central Government under section 3(1) of the Railway (Local Authorities Taxation) Act, 1941 declaring the railway property liable to pay the tax to a Panchayat, the railway property would be exempt from such tax (see section 154 of the Government of India Act, 1935).

16/-

Remembrancer of Legal Affairs.

U.F.to H.& L.G.D., No. 131 dated the 5th January 1949.

H.V.D.
15/6
4c.

Office of the R.L.A.

Bombay Village Panchayats Act, 1933, sec.89.

Railway (Local Authorities) Taxation Act, 1941. sec.3(1)

Liability of Railway properties Village Panchayat Taxation.

The amendment made by Act II of 1945 does not either expressly or by necessary implication make Crown property liable. Moreover the object of that amendment was not to make such property liable, but to valid te the exemption given in the Rules to such property, it being recognised that such validation was itself exempt contels. (see p. 365 of File No. -1807, of 1945). The true legal position therfore is that all Government property, whether used for profit or otherwise, still continue to be exempt by virtue of the Crown's prerogative right. But, Crown property, which is the property of a railway, has been expressly made liable, in pursuance of the notification issued under section 3 of the Railway (Local Authorities' Taxation) Act, 1941, to pay the house tax and general sanitary cess levied by the Valsaman Village Panchayat. Crown property which is the property of a railway would ordinarily be treated as used or intended to be used for profit; and in that view the liability created under the notification would not be affected by the exemption given in the Rules.

The R.L.A. would advise that the Rules should be suitably amended so as to make them conform with the legal position in respect of Government property ingeneral and Railway property in particular.

-s/-

Remembrancer of LegalAffairs.

U.P. to R. & I.C.D., No. 2481 dated the 1st March 1949.

N.V.D.
15/3
48.

Office of the D.L.A.

Bombay Village Panchayat Act, 1933. Section 8(j). Explanation 2 to section 8.

Under section 8 (j) a person cannot be or continue to be a member of a panchyat, if he is a servant of the Crown. It is true that when the Patil originally became a member, the statutary bar against a Patil making him ineligible for the office was specially removed. But the bar was thereafter reintroduced by the amending act of 1947 since the amending act did not save the rights of the existing incumbents, they will be disqualified to continue as members.

d/-

Remembrancer of Legal Affairs.

D.F. to H.A.L.L. No. 1776 dated the February 1949.

HV. D.
15/6
4c.

The facts are stated in the letter from the Collr. of Hafra, No. V.r.dtd 5-10-48 and in the above note. The Commr. H.L. is of opinion that under rule 8, the objections to the assessment are to be heard and decided by the Panchayat in the first instance and the person dissatisfied with the Panchayat's decision have a right of appeal to the Distt. Local Board, so far as the amount of assessment is concerned. He further states that the fact that the provision regarding appeal relates to assessment only is borne by the wording of rule 9. The H.& I.G.Deptt. office agrees with the Commr. H.D. and considers that the action of the D.L.B, Hafra, in ordering the village Panchayat, Amroli to change the entry appears to be ultra vires. D.L.A. is requested to advise whether the H. & I.G.D. office view is correct.

H.V.D.
15/6
4c.

Office of the F.L.A.

Seen and Returned.

S/-

Remembrancer of Legal Affairs.

F.F. to H.& L.G.D., No. 3886, dated the 11th April 1949.

H.F.D.
15/6
40.

Office of the P.L.A.

Sub-section (1) of section 6 provides that a panchayat shall consist of such number of elected members not being less than seven or more than fifteen in number, as the Collector after consultation with the District Local Board may determine. No doubt the words "after consultation with the District Local Board" do not make it incumbent upon the Collector to abide by the advice. However, the consultation with the District Local Board is a condition precedent to determining the number by the Collector; and that condition cannot be waived in the manner suggested by the Health & Local Government Department. The Collector would be required under the law to consult the District Local Board. It would no doubt be open to the local board in response to such consultation to pass a general resolution of the kind in advance, there would be no delay when the Collector comes to consult the Board for the Board has simply to refer him to the resolution passed by them.

-S/-

Remembrancer of Legal Affairs.

U.O. to L.& L.G.L. No. 4643 dated the 28th April 1949.

N.V.P.
15/6
4c.

Office of the P.L.A.

Bombay Village Panchayats Act, 1933. section 102(4)(a).

It appears that the period of supersession of the Burdwadi Panchayat expired on 31st December 1948, and Government proposes to reconstitute the Village Panchayat as early as possible. However, Mr. Maral the person appointed to administrate the superseded Panchayat is considered to be entirely useless, and the Collector proposes that he should be replaced by one Mr. H.N. Bulla. The question raised for P.L.A.'s consideration is whether since the period of supersession expired on 31st December 1948, it is legally competent for Government to extend it further and to take action under section 102(4)(a) of the Bombay Village Panchayats Act to appoint Mr. Bulla vice Mr. Maral.

2. Since the period of supersession of the Village Panchayat, Burdwadi, has already expired, no further extension of the period of supersession would be legal; see P.L.A.'s opinion No.6456 dated 17-7-1940. The next question for consideration is whether in view of the impossibility of any further extension of the period of supersession of the Panchayat, it would be legal to replace Mr. Maral by Mr. Bulla. Sub-section(4) of section 102 of the Bombay Village Panchayats Act, 1933 provides:-

> "If a panchayat is superseded--
> (a) all the powers and duties of the panchayat shall, during the period of supersession, be exercised and performed by such person or persons as the Provincial Government may from time to time appoint in that behalf;
>
> (b) all property vesting in the panchayat shall, during the period of supersession, vest in the Provincial Government; and
>
> (c) on the expiry of the period of supersession the panchayat shall be reconstituted in the manner provided in this Act and the persons vacating office shall be eligible for re-election or re-nomination.

Although the period of supersession of the panchayat expired, the person appointed to administer the panchayat would continue to exercise the powers and duties of the panchayat until a new panchayat is duly constituted. See P.A.'s opinion No. 4223 dated 23-3-1953 and No. 6456 dated 17-7-1940. The words "during the period of supersession" in clause (a) of section 102(4) would, therefore impliedly include the period from the date of the expiry of the order of supersession to the date of the reconstitution of the panchayat. Consequently, there would appear to be no legal objection to Government's reserving Mr. Maral and appointing Mr. Mulla under clause (a) of section 102(4); for, unless this provision is so interpreted, it would be impossible to administer a superseded panchayat in the event of the administrator's death, resignation or disability occurring during the interregnum.

-S/-

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D., No. 5529, dated the 18th May 1949.

N.V.D.
15/6
4c.

Office of the [illegible].

In the village of Varangaon a weekly bazaar is held on the private land of Mamdar Mr. Deshmukh whose right to recover the ground rent has been established since 1875. The question raised for the consideration of the D.L.A. is whether under Rule 34(1) of the Bombay Village Panchayats Taxes and Fees Rules, 1944, the Village Panchayat of Varangaon can levy Bazar fees in respect of the bazar held on this private land.

2. The rule occurs in Part VIII of the Bombay Village Panchayats Taxes and Fees Rules, 1944, and that Part is apparently referable primarily to clause (vii) of sub-section(2) of section 89 of the Village Panchayat Act, 1933. Under clause (h) of sub-section (1) of section 85 of the Act it is also the duty of the Village panchayat to make reasonable provisionfor the control of fairs and bazaars. Markets or bazaars contemplated by the rules need not necessarily be maintained or organised by the village panchayat. The power is to levy fees on markets which is wide enough to include both public and private markets or bazaars. The Rules must be read in the light of that power along with the power given to the Village panchayats of controllin bazaars. Under Rule 35 the panchayat has been given the power of determining the limits of the are within which the market fee shall be levied and the limits of area within which the bazaar fee shall be levived and the limits of the area within the limits so fixed no person can occupy any open space or plot of land, be it private or public, without obtaining a permit. It follows from all these provisions that the bazaars, so long as they are held within the

municipal limits fixed under Rule 38, would come within the scope of Rule 84 and the person occupying open places or plots of land therein for the purpose of shop, booth, stall, etc., would be required to pay fees leviable under that Rule.

3. Sub-section (2) of section 89 does not enumerate any fee as such. There is a well known distinction between a tax and a fee; and the above opinion is given without deciding whether fees of the kind under consideration would come under the taxes specified in clause (vii) of sub-section (2) of section 89 even when it is read with the definition of the word "tax" as contained in clause (xiv) of section 3 of the Act.

Sd/-

Remembrancer of Legal Affairs.

J.R. to H. & L.G.L. No.6433 dated the 11th June 1949.

N.V.R.
16/6
4c.

Under sub-sect.(1) of sect. 89 of the Bom. Village Panchayats Act a panchayat shall levy a tax upon the owners or occupiers of houses, and of lands which are not subject to payment of agricultural assessment at such rates as may be prescribed. Under sub-sect.(2), it is competent to a Panchayat to levy all or any of the taxes or fees specified in clauses (i) to(vii), at such rates and in such manner, and subject to such exemptions as may be prescribed. The word "prescribed" means prescribed by rules (see sect.3(8). Under clause (m) read with clause (s) of sub-sect.(1) of sect. 108, the Provl. Govt. may, by notificati in the official Gazette make rules prescribing the rate and the manner in which and the exemptions subject to which taxes and fees sepcified in sect. 89, may be imposed. As the rule making power is delegated to the Commissioner of Division under sect.112, they have framed the Bom. Village Panchayat Taxes and fees Rules, 1944. Rules under Pt. VII of the said Rules would appear to fall within the scope of Cl.(VII) of sect.89(2) of the Act.

The conditions precedent for levying the special sanitary tax are stated in rule 30, and it appears that the requirements of clause,(a) and (b) of rule 30 are duly complied with in respect of the Virar Gram Panchayat (See letter of Chairman, Sanitation Committee). Under sub-rule (1) of rule 29, a Panchayat which decides to levy the special sanitary cess shall levy it at the rates specified in the Schedule annexed to Pt. VII.

(1)....

(i) on each privy or latrine attached to a house, or

(ii) on each family using such privy or latrine.

The term 'family' as defined in rule 28(ii) means the body of persons living and messing together in one house, including visitors, guests and servants. The term 'family' would, therefore, include the family of the owner or the tenant, as the case may be, who actually uses the privy or latrine, and for the recovery of such cess under rule 32, the head of the family that actually uses the privy or latrine would be liable for payment of such cess.

The special sanitary cess levied by the Gram Panchayat, Virar, is legally valid. The view expressed in H. & L.G. Department note is correct.

If, however, instead of levying the special sanitary cess on each 'family' using the privy or latrine, the Gram Panchayat proposes to levy the tax on each owner of the house, it can do so by levying the cess on each privy or latrine under rule 29(i), but in view of the fact that the Gram Panchayat proposes to levy "general sanitary cess" on the owners, it has deliberately levied the special sanitary cess on the 'family' basis.

vide p.6 ante

Legal Department.

The view expressed in the Health and Local Government Department office note dated 28th June 1949 is correct.

If however, the Gram Panchayat, Virar, decides to levy Special Sanitary Cess on each privy or latrine attached to the house, the procedure prescribed by rules 2 and 3 of the Bombay Village Panchayats Taxes and Fees Rules, 1944, will have to be followed by the Panchayat.

Sd/-

Additional Secretary to Government.

T.P. to H. & L.G.D. No. 7369 dated the 2nd July 1949.

H.V.D.
16/6
4c.

Office of the F.L.A.

Bombay Village Panchayats Act, 1933, Section 89.

Railway Local Authorities Taxation Act, 1941, Section 3.

F.L.A.'s opinion No.2411 dated 1-3-1949.

Rule 2 of the Rules regarding the levy of tax on owners or occupiers of houses and lands by Village Panchayats originally provided as follows "Every panchayat mentioned in the Schedule hereto annexed houses and lands within the limits of the village at the rates specified opposit to it in the next column of the said Schedule." To this rule has been recently added the following provision.

"Except the following cases -

(a) lands and buildings, belonging to Government, Local Boards, Municipalities, the Municipal Corporation for the City of Bombay, and Panchayats, and used solely for public purposes, and not used or intended to be used for purposes of profit"

(b) lands and buildings used solely for religious, educational and charitable purposes;

(c) lands and buildings of a capital value of less than Rs.100 or an annual letti.. value of Rs. 6/- or less."

2. In his opinion No. 2411 dated 1st March 1949 the Remembrancer of Legal Affairs has advised that the rules should be amended so as to make them conform with the legal position in respect of Government property in general and Railway property in particular as stated in the said opinion. In accordance with the said opinion lands and buildings belonging to Government shall be exempt from taxation whether such lands are used for profit or otherwise. The lands and buildings belonging to railways in respect of which a notification has been issued under section 3 of the Railways (Local Authorities Taxation) Act, 1941, would not, however, be entitled to such exemption. In view of this position clause (a) which has been recently added to rule 2 may be amended as follows:-

(a) lands and buildings belonging to Local Boards, Municipalities, the Municipal Corporation for the City of Bombay and and panchayats and used for public purposes and not used or intended to be used for purposes of profit;

(aa) lands and buildings belonging to Government, whether or not used or intended to be used for purposes of profit, but not including lands and buildings in respect of which a railway administration is liable to pay tax or a sum in lieu thereof in virtue of a notification under, section 3 of the Railways (Local Authorities' Taxation) Act, 1941;"

The Commissioners should be asked to amend rule 2 on the lines suggested above.

Sd/-

Remembrancer of Legal Affrs.

V.P. to D.& L.G.D. No.7375 dated 4th July 1949.

M.V.D.
16/5
4a.

Office of the D.L.A.

The Bombay Village Panchayats Act, 1933. Section 23(1)

Bombay Village Panchayat Rules, 1948. Rule 34.

Local Board Election Rules 1932. Rule 42.

Candidate elected in two wards - filling up vacancy caused by resignation of one of the seats.

In the general election to the Village Panchayat at Vadgaon Nimbalkar in Baramati Taluka of the Poona District one candidate contested the election for two wards. He secured the highest number of votes in both the wards and the Returning officer declared him as elected for both seats. Under Rule 34 of the Bombay Village Panchayat Election Rules, 1948, the candidate resigned his seat in one ward and retained his seat in the other ward. The Commissioner, Central Division, considers that the vacancy caused by the resignation of the candidate under Rule 34 can be filled in on the analogy of Rule 42 of the Local Board Election Rules, 1932. Health and Local Government Department, however considers that there being no specific provision to that effect in the Bombay Village Panchayat Election Rules, the vacancy is to be treated as one caused by the resignation of a member under section 23(1) of the Bombay Village Panchayat Act, 1933, and a by-election will have to be held. The D.L.A. is requested to advise.

The view taken by Health and Local Government Department is correct. Rule 34 of the Bombay Village Panchayat Election Rules, 1948, permits a candidate, who has been elected to more than one seat, to resign all but one of the seats. But there is no provision in these Rules as to how the seat resigned by him should be filled. In the absence of any definite provision, it would not be evident to fill the vacancy on the analogy of the provisions contained in Rule 42 of the Bombay Local Board Election Rules, 1932. The Parliamentary practice in England follows the course of holding a fresh election in such cases. There it is stated in Note 4 to Article 1 of the Law of Parliamentary Elections and Election Petitions

by Sir Hugh Fraser that when a member before taking his seat is returned for two or more constituencies, he must elect to sit for one of them within one week after the time limited for presenting petitions to the Court against his return has expired. There is, however, no provision in that article as to how such vacancy should be filled. However, it is stated in Parker's Election xxxx Agent and Returning officer at page 109 that a fresh election is held for the place for which the member elects not to serve. It is, therefore, apparent that in cases where there is no specific provision as to how such vacancy is to be filled, it would be more appropriate to fill it by a fresh election instead of proceeding on the analogy of Rule 42 of the Local Board Election Rules. Section 23(1) of the Bombay Village Panchayats Act, 1933, no doubt provides for filling up of casual vacancies but there would be no objection to treating the vacancy caused by resignation under Rule 34 as a casual vacancy, for the notice of resignation delivered to the Returning Officer under Rule 34 will have to be ultimately forwarded to the Collector under Rule 29. Consequently, notice of such vacancy can be deemed to have been given xxx to the Collector within the meaning of section 23.

Sd/-

Remembrancer of Legal Affairs.

U.O. to H.& L.G.D., No. 6669, dated the 16th June 1949.

H.V.D.
16/6
4c.

Office of the Taluka.

The Bombay Village Panchayats Act, 1933. Section 12(1).

The question for D.L.R.'s consideration is whether a time limit of four weeks specified in section 12(1) of the Bombay Village Panchayats Act, 1933, applies to the date of the meeting itself or to the fixation of the date of the meeting by the President.

2. Sub-section(1) of section 12 of the Bombay Village Panchayats Act, 1933, provides: "The term of office of the members elected at a general election or appointed under sub-section (3) of section 6 shall be deemed to commence on the date of the first meeting of the panchayat. The first meeting of the panchayat shall be held on a date fixed by the President of the District Local Board within four weeks from the date on which the names of the elected members are published under section 6. If the President fails to fix such date within the time so specified the Collector shall fix such date." The important point for consideration is whether the words "within four weeks from the date" will go with "date" or "fixed". The reasonable construction would be that the time limit of four weeks applies to the date of the meeting and not to the fixation of a date; for, if the time limit were to be only with respect to passing the order, then it would be open to the President to pass such an order within four weeks fixing any date he pleases, which date may be some months thereafter. This interpretation would defeat the very object of the provision, namely, the calling of the first meeting of the new panchayat as early as possible so that it may begin to function. The second paragraph of the proviso to section 17(2) also shows that the object is to call the meeting as

soon as possible; the period of 15 days therein given will become meaningless if the President could himself fix any date, as far beyond one month as he like. It would, therefore, follow that the time limit of four weeks specified in section 12(1) applies to the date of the meeting itself and not to the fixation of the date of the meeting by the President.

Sd/-

Remembrancer of Legal Affairs.

U.O. to H.& I.D. No. 7930 dated the 14th July 1949.

H.V.D.
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Legal Department.

In his letter No. 1280 dated 21-3-1949, the Sarpanch, Village Panchayat, Chembur presumes that section 10A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, does not prevent a landlord from recovering increases in taxes, cesses and fees levied for services by local authorities, such as special sanitary cess, general sanitary cess, lighting tax etc. from the tenants. The Commissioner, H.P. is of opinion that the general sanitary cess, general and special water-rates and lighting tax and house and property tax are taxes or rates levied on buildings and the landlord cannot increase the rent, if a local body increases the taxes or rates of any or all the taxes after 31-3-1949 (vide proviso (c) to section 59 of the Bombay District Municipal Act and section 73 of the Bombay Municipal Boroughs Act). But when a local body increases any taxes such as special sanitary cess which are taxes for specific services, the landlord can claim increase in rent from the tenants to the extent to which such taxes have are increased. In the L.& L.R. office note dated 11-6-1949 it is stated that

(i) as the house-tax, the general sanitary cess and the general water-rate are levied as rates on houses etc. it will not be possible for a landlord to make an increase in rent on account of increases made in the general taxes after 31-3-1949;

(ii) that as regards special or service taxes, the service or special taxes can be levied either as rates on buildingsor in a special manner depending for example on the number and size of taps in the case of special sanitary cess.

If, therefore, the taxes are levied as rates on buildings, the landlord will not be empowered to

make an increase on account of the increase in these taxes: but if the service taxes are not levied as are rates or taxes on buildings, the landlord will be empowered to make an increase in rent on account of increases made in these taxes.

D.L.A. is requested to advise whether the above view of the H.A.A.D. Department is correct.

H. A. D.
16/6
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Office of the P.L.A.

...een and returned.

2. The view taken by H.& L.G.Department is correct. Under rules in Part VI of the Bomba. Village Panchayat Taxes and Fees Rules, 1944 the general sanitary cess is levied at a rate on building while under Part VII the special sanitary cess is levied at a rate on each privy or latrine. The latter would notbem a rate on buildings and consequently section 10A of the Bombay Rent, Hotel and Lodging House Rates Contr act, 1947 would be no bar to the landlord increas ing the rent if the special sanitary cess is increased and recovered from him.

Sd/-

Remembrancer of Legal Affairs.

L.F. to H.& L.G.Deptt. No. 7698 dated the 11th July 1949.

N.W.P.
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Office of the P.L.A.

The Bombay Village Panchayats Act, 1933.

sec. 4(1)&(2).

Grouping of one village with the hamlet of another village for the purposes of-

Section 4(1) of the Bombay Village Panchayats Act 1933 reads as follows:- "Whenever the Provincial Government after making such enquiry as may be prescribed is satisfied that any local area comprising a revenue village or a group of revenue villages or hamlets forming part of a revenue village has a population of not less than two thousand it shall by notification in the Official Gazette declare such local area to be a village." Sub-section(2) further provides that "The Provincial Government may after consultation with the District Local Board by like Notification at any time (a) include within any village or exclude from any village any local area or otherwise alter the limits of any village.

There is unanimity on the point that once a village is declared under sub-section (1) it would be feasible under sub-section (2) to add there to any hamlet from any revenue village. Difficulty is, however, experienced as to whether at the very outset a hamlet of one revenue village can be combinedwith another revenue village. Even assuming that the article 'a' in the expression 'hamlets forming part of a revenue village' is construed to mean 'any' and not 'one', the difficulty still remains unsolved; for, there is no express provision nor can such provision be gathered by implication, that a hamlet of different revenue village can be grouped with a revenue village for constituting a local area.

In this particular case recourse should, therefore, be had to the unambiguous provisions of sub-section(2) of section 4 of the Act. For future purposes it may be necessary to amend the Act if

the intention be to include in the village not only hamlets from different villages but a revenue village and a hamlet from another village.

G/-

Remembrancer of Legal Affairs.

U.O. to H.& L.J.L., No. 8615 dated 30th July, 1949.

N.V.D.
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4c.

Office of the Tal.

The Bombay Village Panchayats Election Rules, 1948. Rule 9.

The question for the Remembrancer of Legal Affairs consideration is whether nomination paper to the Returning officer for village panchayat election is required to be delivered by the candidate in person or by post or through an agent. Rule 9 of the Bombay Village Panchayat Election Rules, 1948, provides that on or before the date prescribed for the nomination of candidates every person who desires to seek election shall make an application in writing in the prescribed form (Form C) to the Returning officer signifying his willingness to serve as a member of the panchayat and stating the community, class or tribe to which he belongs. Form C is the form of nomination. It is stated at its foot "the date on which and the time at which nomination paper was delivered to the Returning officer." This is to be filled in by the Returning officer himself. Beyond the words "delivered to the Returning officer" there is nothing either in the nomination paper or in rule 9 to indicate whether the nomination paper should be delivered by the candidate himself or through any agency. However, these words "delivered to the Returning officer" clearly indicate that the nomination paper must be delivered by the candidate to the Returning officer. The legal meaning of "deliver" as stated in New English Dictionary is to give or hand over formally, especially a deed to the grantee or to a third party. It appears, therefore, that the nomination paper must be handed over personally to the Returning officer. This implies that any other mode of delivery through an agency is to be excluded. Consequently, the personal attendance of the candidate for the delivery of the nomination paper to the Returning officer appears essential.

N.V.D.
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U.R.No.H.& L.GD.No.8439 dt.24/7/45.

c/-
Remembrancer of Legal Affairs.

Local Deptt.
Pg No. 1234

*pp. 13-14 of papers at slip E.
@pp. 1-2 of correspondence

The facts are stated in the D.O.L. from the Collr. of Surat, No.V...45 dt. 24-4-49 and in Collr's @ letter No. V...45 dt. 23-6-49. In exercise of power conferred by sub-sect.(1) of sect. 4 of the Bom. Village Panchayats Act, 1933, Govt. declared that the local area comprising the revenue village of Sunvali in Surat Distt. shall be a village with

Pt.6 of slip A

effect from 1st Nov. 1940 (vide G.L.Notifn. 518/33(b) dt. 19-8-1940). The village of Sunvali is comprised of several Faliar, viz. Sunvali, Junagam, Kariyava, Gundardi and Nata Falia. It is, however, stated that though the election procedure was followed none came forward with nomination papers with the result that there was a failure in return of required number of qualified persons willing to take office within the meaning of section 6(3) of the Act. It is surprising that neither the District Local Board, Surat, nor the Collr. of Surat, took steps to appoint the required number of persons qualified to be elected. The result is that no panchayat is established for the revenue village of Sunvali.

P.1. of correspondence.

The residents of Sunvali Falia have informed the Collr. that they do not want either a separate village panchayat for their Falia or a joint village panchayat comprising of other Faliae. The Collr. has, however, learnt that the residents of Gundardi Falia, Nata Falia and Majira are willing to have a joint village panchayat for their Faliae, and they do not want to joint with Sunvali and Junagam faliae. Even residents of Junagam Falia are anxious to have an independent village panchayat for Junagam Falia alone. The residents of Sunvali are not willing to have any panchayat. In view of these facts, the Collr. of Surat

[illegible] Punavali may be
de-notified as a village and states that proposals
for the establishement of separate village panchayats
as desired by the residents of the respective Falia s
would be submitted to Government.

The H.& L.G.D. office, however, relying upon
to P.L.A's opinion No.5353 dt. 16-6-48 holds that since P.1 ante
the population of the revenue village of Punvali
is 2258, it is not open to Govt. to de-notify
it under sub-sect.(2) of sect.4, for sub-sect.(2)
cannot over-ride the mandatory provisions of
sub-sect.(1). It, however, considers that it is
open to Govt. to exclude any local area or
otherwise alter the limits of the village under
sect.4(2)(a) . In light of the legal position so
stated, the H.& L.G.D. recommends that all Falias
except Punavali itself may be excluded from the
'village' and the area so excluded may be formed into
different village panchayats as proposed by the Collr.
P.L.A. is requested to advise whether the course
suggested in the H.& L.G.D. office note dt.13-7-49
is legally in order or whether Govt. can straightway
denotify Punvali under sect.4(2)(b) of the Act.

N.V.D.
16/6
4c.

Office of the P.L.A.

Bombay Village Panchayats Act, 1933.

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section 4(2)(b)

seen and returned.

The course suggested by Health and Local Government Department is free from any legal objection. Government cannot straightway denotify Sunvali under section 4(2)(b) of the Bomba. Village Panchayats Act, 1933 (see P.L.A.'s opinion No.5353, dated the 16th June 1942 concurred in by the Advocate General in his opinion dated the 17th July 1942.

Sd/-

Remembrancer of Legal Affairs.

U.O. to P.& L.J.D. No.8539 dated the 29th July 1949.

N.V.D.
16/6
4c.

Bombay Village Panchayats Act, 1933, section 112(5).

According to the maxim "delegate potestas non potest delegari" a delegated authority cannot be re-delegated. Vicarius non habet vicarium one agent cannot lawfully appoint another to perform the duties of his agency (see Broom's Legal maxims p. 570). The general principle, however, is that the powers conferred by Statute cannot be assigned without express statutory permission to do so (vide page253 of Craies on Statute Law) Sub-section (5) of section 112 of the Bombay Village Panchayats Act contains express provision empowering the Collector, subject to the general or special orders of the Provincial Government to delegate to an officer not below the rank of Assistant or Deputy Collector powers exercisable by the Collector under this Act. The words "powers exercisable by the Collector <u>under this Act</u>" contemplate only those powers which are conferred by the statute as exercisable by the Collector and those powers can be delegated and not the powers which are exercisable by the Provincial Government under the Act, but which in turn are delegated to the Collector under sub-section (1) of section 122 . Under the Collector's order dated the 25th January 1944, the Collector of Nasik has delegated to the Prant Officers "all the powers of the Collector <u>under the Village panchayats Act</u> other than the powers under sections 4 and 110(2) of the Act". The order implies that only powers conferred by the Village Panchayats Act and no those delegated to him by Government unde section 112)(1) of the Act, are delegated to the Prant officers.

Sd/-

Remembrancer of Legal Affairs

U.R.toH.& L.C.D.No.8543, dated the 29th July 1949.

N.V.D.
16/6

Village of the R.L.A.

Prosecution for nuisance. section290.

Bombay Village Panchayats Act, 1933 sec.26.

A prosecution for the offecne under section 290 of the Indian Penal Code would not appear feasible in this case. Instead, action should be taken under the By-laws framed by the District Local Board, Kaira District Under section 26 of the Bombay Village Panchayats Act. (xsee Bye-laws 5 to7, 46 and 51 and section 101 of the Act)

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No. 8729 dated the 3rd August 1949.

N.V.D.
16/6
4c.

Office of the H.L.A.

The village Panchayats in the East Khandesh Distri have passed resolutions for contributing funds towards Mhatma Gandhi National Memorial Fund for the purpose of being utilized for the opening of a Leper Asylum in the District. The question for consideration is whether the village panchayats can incur expenditure on account of such contribtutions from their funds.

Sub-section(2) of section 26 of the Village Panchayats Act, 1933 empowers a Panchayat with the previous sanction of the District Local Board to make provision for carrying out, outside the village, any work of the nature specified in sub-section(1). Clause (e) of sub-section (1) of section 26 refers to the preservation and improvement of the public health as on of the matters for which a Panchayat can make provision within the village. Provisibn for the opening of a Leper Asylum willbe a matter for the preservation and improvement of public health within the meaning of clause (e) of sub-section (2) of section 26, A Panchayat can, therefore, make contribution from its funds for the establishment of a Leper Asylum. Since the leper asylum will be established outside the limits of the village for which a Panchayat is established, it is necessary for the Panchayat to take the previous sanction of the District Local Board before making any contribution from its funds towards the Mahatma Gandhi National Memorial Fund. The deletion of sub-section(2) of the Act by Bombay Act IV of 1947 does not affect the nosition stated above.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D.No. 8784 dated the 4th August 1949.

N.V.D.
16/8
4c.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the Home Guards (who are for certain purposes public servants) can be considered as servants of the Crown within the meaning of clause (j) of section 8 of the Bombay Village Panchayats Act, 1933.

2. Attention is invited to R.L.A.'s opinions Nos. 29 dated 3rd January 1939, 2882 dated the 2nd April 1942 and 7997 dated 2nd October 1942. There is no statutory definition of the expression "servant of the Crown". According to the definition in the Indian Penal Code, sections 13,14,and 17, a servant of the Queen, which is the same as a servant of the Crown, includes all officers or servants continued, appointed or employed in India by or under the authority of the Government of India or any Government. That is in accordance with the theory of the Constitution, and we may fairly assume that the words "servants of the Crown" have the same meaning (see Marathe vs. Pandurang I.L.R. 38 Bom. 770) In the absence of any authoritative definition, the test followed by Parliament in making adaptations to Indian Acts was that no officer can be said to be a servant of the Crpwn unless he is either appointed by Government or paid out of Government revenues.

3. Judged by this test, the Home Guards must be pronounced to be servants of the Crown. The Home Guards are appointed under section 3 of the Bombay Home Guards Act, 1947, by the Commandant, who himself is appointed by the Provincial Government under sub-section (2) of section 2 of the Act. The Rules framed under section 8 also provide for the appointme of Home Guards. Under section 8 they have the same power, privileges and protection as an officer of Police,

appointed under any Act for the time being in force when they are called out under section 4; and under section 6 they are under the control of the officers of the Police Force. Rule 9 ~~of~~ provides for a duty allowance to be paid to them when they are called out; They are thus appointed or employed under the authority of the Provincial Government and are also paid out of Government revenues when they are called to perform duties, and, therefore, they must be treated as servants of the Crown.

4. The view taken by the Prant Officer, Pandharpur Division, and upheld in appeal by the District Magistrate, Sholapur, is correct.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No. 200-L, dated the 10th October 1949.

N.V.D.
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The question for R.L.A's consideration is that when under Sect.6(3) of the Bom. Village Panchayats Act, 1933, the Standing Committee of a district local board failed to appoint the required number of persons as members of a village panchayat within four weeks from the date on which the names of elected members are required to be published by the court in the manner prescribed whether in light of the principle enunciated in R.L.A's opinion No. 6219 dated 3-6-1949, the Standing Committee would be competent to make such appointments even after the expiry of the specified period of four weeks.

Sub-section (3) of sect. 6 of the Bom. Village Panchayats Act, 1933 provides -

"If for any reason the election does not result in the return of the required number of qualified persons willing to take office, the Standing Committee of the district local board shall, within four weeks form the date on which the names of elected members are published in the prescribed manner by the Collr. appoint the required number of persons, being persons who would have been qualified to the elected. If the Standing Committee of the district local board fails to make all or any of such appointments within the time specified, the Collr. shall make such appointments; and the persons so appointed shall be deemed to have been duly elected under sub-section (1)".

"It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction invalving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment" (pp. 372-374 of Maxwell on Interpretation of Statutes).

In Caldow V. Pixell (1877) 2. C.P.D. 562 Denman J. said "It is stated that in general the provisions ofstatutes creating duties are directory". By this is meantnot that it is optional in the part of a public functionary whether he willperform duties imposed upon him by Statute, but that if a public functionary neglects to perform a Statutory duty, the neglect on his part will not necessarily invalidate the whole operation with regard to which the statutory duty had to be performed. It is not, however, a universal rule that Statutes which create public duties are merely directory. In the absence of an express provision, the intention of the Legislative is to be ascertained by weighing the consequences of holding a Statute to be directory or imperative (See Caldow V. Pixell above referred to). Sect. 6(3) of the Bom. V.P. Act confers power (in the Standing Committee to appoint members of a village panchayat in case where the election does not result in the return of the required number of members. This provision does not, however, leave it to the discretion of the Standing Committee to appoint members at any time, if it likes. It prescribes the period for appointment of such members and if the Standing Committee makes default in appointing such members within the specified period , power is conferred on the Collr. to make such appointments. The result is that if the Standing Committee of a local board has failed to make the appointments of the required number of members within four weeks from the date on which the passes of elected members are published by the Collr., the Collr. would be seized of the power to do what the Standing Committee failed to do. Consequently, after the period specified in sect. 6 (3) has elapsed, the Standing Committee will have no power to appoint the required number of members for, after such period, the power to appoint the required number of members for, after

after such period, the power to appoint the members would vest in the Govt. The principle laid down in P...'s No. 6219, dt. 3-6-1949 would not apply as the provisions of sect.6 (3) are mandatory.

The P...'s opinion No.10253, dt. 30-10-48 was based on the particular facts of the case and has no application.

N.V.R.
18/6
4c.

Office of the P.L.A.

mbay Village
nchayats Act,
35.
ection 6(3).

The view taken by H. and L.G. Department in its office note at p. 3 ante is correct. The provision for the time limit of four weeks prescribed by section 6(3) of the Bombay Village Panchayats Act is to be considered as mandatory in view of the fact that the failure by the Standing Committee of the District Local Board to exercise the power within that time would vest in the Collector the power to make appointments. P.L.A's opinion No. 6210, dated 6th June 1949 has no application to the present case.

S/-

Remembrancer of Legal Affairs.

U.R. to H. and L.G. Department, No. 11686,
dated the 19th October 1949.

N.V.A.
18/6
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Office of the L.A.A.

Bombay Village Panchayats Act, 1933.

Section 89(2)(n) and 108(1)m.

The tax on sale of cattle falls under section 89(2)(iv) of the Bombay Village Panchayats Act, 1933, since the expression "goods" includes live animals (see N.L.A's opinion No. 7934, dated the 13th November 1944). Consequently the levy of this tax does not require the sanction of Government. Tax on brokers falls under section 89(2) (vii and as such it requires the sanction of Government. The maximum rates in respect of both of these taxes may be fixed by Government under section 108(1)(n) and rules will have to be framed under clause (n) of that sub-section.

Sd/-

Secretary of Legal Affairs.

N.F. to H. & L.G.D. No. 11417 dated the 13th October 1949.

N.V.D.
18/6
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The Village Panchayat, Valcang, has resolved to take up the Government properties in the Village Goothan, as described in the list at p. 14 ante, subject to the terms and conditions suggested by the Collector of Thelagur in his letter No. 8/8224 dated 12-8-49. The Commissioner C.D., however, recommends that the Government properties may be transferred to the Government Village Panchayat, Valcang, on the conditions proposed by him. The R.& L.C. Department refers to sect. 28 B of the Bombay Village Panchayats Act, and holds that the properties vested in the Panchayat under sect. 28B of the Act will not entitle it to derive any income therefrom and the only thing that the V.P. can do will be to spend on the maintenance of such properties. P.-A. is requested to advise whether the R.& L.C. Department's view is correct.

pp. 21-27 ante.

p. 5 ante.

p. 1 ante.

P.V.P.
18/8
4c.

Opinion of the Law Department.

Bom. Village Panchayats Act, 1933 Sanction 51(2) (1)

The view expressed by H.& L.D. Department is not correct. It would be open to a Panchayat to derive income from the property vesting in it under S. 28-B of the Bombay Village Panchayats Act, 1933 provided it involved no breach of the conditions and restrictions subject to which the property was ordered to vest in the Panchayat (vide section 51(2) (1) of the Act).

Sd/-

Secretariat of Legal Affairs.

U.O. to H.& L.D. No. 12811, dated the 14th November 1949.

H.V.D.
13/6
4c.

Office of the C.L.A.

The second part of the proviso to sub-section (2) of section 17 says that 'if the President of the District Local Board fails to convene such meeting within a period of fifteen days from the date fixed under sub-section(1) of section 12, the Collector himself shall convene such meeting. The President of the District Local Board or the Collector, as the case may be, shall nominate one of the members to preside at the meeting so convened. If the person so nominated fails to preside at the meeting the members present shall elect one of them to preside.' When the word "members" occurring for the first time in this part is read in the context specially in its relation to the underlined words it would become apparent that the members of a Village Panchayat is meant thereby. No doubt, the meeting is to be convened in the manner prescribed in sub-section (1), but the latter part of the proviso having made special provision as to who should preside at the meeting, to that extent the corresponding provision in sub-section(1) will have no application. The view taken by the Secretary, Health & Local Government, is correct.

2. The meeting presided over by a Chairman neither elected nor appointed according to the provisions of a statute is not a valid meeting. (See Halsbury's Laws of England Vol. VIII, paragraph 89 pp. 51-52). The action taken by the Collector in this case is quite correct.

Sd/-

Remembrancer of Legal Affairs.

U.O. to Health & Local Government Department No. 12402, dated 3rd November 1949.

M.V.D.
18/6
4c.

At the meeting held on 15.8.49 the Grow More Food Sub-Committee of Ministers considered among the matters the question of enacting permissive legislation to enable the Panchayats to undertake the preparation of compost and night soil manure, and decided to draft the necessary legislation (vide Item No. 6). The R.& L.G. Dept. refers to clause (6) of sub-sect(1) of sect. 264 of the Bombay Village Panchayats Act and considers that as the work of preparation of compost and night soil manure is covered by the said provision, no amendment of the V.P. Act is called for.

vide p. 3 ante.

vide p. 15 co.

From the note of the H.F. & F.D. dt. 13.10.4 it appears that H.M.(Agr) desired that just as a municipality has authority to prevent the town people from committing nuisance in public places, the enabling legislation should provide for the powers of the Panchayats to ensure that the village people use only the trenched latrines when constructed. In view of the remarks stated in para 4 of the note dt. 29.10.49, the R.& F.D. considers that as the village Panchayats have already got the necessary powers under the Bom. V.P. Act to prevent the Village people from committing nuisance in public places and to ensure that they make use of only the trench latrines, no special legislation seems necessary.

pp. 18 & 20 Co.

pp. 21-32 ante.

R.L.A. is requested to advise whether the R & F.D. view is correct.

V.P.
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2. The view taken by the Agriculture and Forests Department is correct.

S/-

Remembrancer of Legal Affairs.

U.O. to A.& F.D., No. 14017, dated the 8th December 1949.

H.T.L.
18/6
40.

Office of the L.A.D.

Bombay Village Panchayats Act, 1933.

L.A.D.'s opinion No.11575 dated 18-10-1949.

A circular may be issued to the Collector explaining the legal position as stated in L.A.D.'s opinion No. 11575, dated 18th October 1949 and no amendment of the act appears necessary.

Sd/-

Remembrancer of Legal Affairs.

U.P. to E.D. No. 12746 dated the 11th November 1949.

M.V.D. 16/6 40.

Bom. Village Panchayats Act, 1933.

Sect. 9(1) & 107A.

Revisional powers of Government whether can be resorted to set aside an order under sec. 9 (1).

Office of the C.E.O.

It appears that the general election for the Village panchayat, Arcda, took place on 4-6-1949, and the Returning Officer declared on 8-6-1949 Messrs. Vithu Ayu Chaudhari and .J. Patil elected to the general seats and Mr. Kasam for the reserved Muslim Seat. On 12-6-1949 Mr. L.G. Kale, one of the defeated candidates, applied to the Prant Officer, Amalner Division, alleging that in the counting of votes mistakes had occurred vitiating the result and requesting that the election of Mr. P.J. Patil who had polled only one more vote than he had should be set aside, and that he should be declared elected in his place. Accordingly, the Prant Officer made the necessary inquiry and found that some irregularity had occurred in the counting of votes. Therefore, under section 9 of the Bombay Village Panchayats Act he set aside the election of Mr. .J. Patil and declared that a byelection be held to fill up the vacancy. Mr. Kale has now applied to the Collector against that decision of the Prant Officer that it was not correct to declare the election as invalid and ordered a byelection for filling up all seats in that ward. The Collector appears to agree with Mr. Kale. But since the order passed by the Prant Officer under section 9 is final, the Collector considers it doubtful whether he can revise the order of the Prant Officer. H.& L.G.D. relies on P.L.A's opinion No. 4935 dated 24-5-1948 and considers that Government has power to revise the order of the Prant Officer under section 107 A of the Bombay Village Panchayats Act, 193

The P.L.A. is requested to advise.

2. Section 9(1) of the Bombay Village Panchayats Act, 1933, empowers the Collector to declare the election of a member to be invalid if such member is elected in contravention of the provisions of section 8 or that an corrupt practice or irregularity has been committed in connection with such election and that such illegality, corrupt practice or irregularity has materially affected had found that the mistake in the counting of votes had occurred in respect of the votes in favour of Mr. .C.Patil. The irregularity or illegality would be deemed to have been committed in connection with his election, and it was competent for the Asstt Officer to declare his election alone as invalid instead of declaring the whole election of that ward as invalid. P.L.A.'s opinion No.4933 dated 24-8-1948 applied to an order which was ultra vires and invalid. Since the order in this case is legally valid and has no cover been given finality under section 9(1), the question of revising it under section 197-A does not rise.

d/-

Remembrancer of Legal Affairs.

N.P. to H.& L.D. No. 9752 dated the
29th August 1948.

N.V.D.
1948

Office of the P.L.A.

Disqualification. Bombay Village Panchayats Act, 1933, section 9 (1).

The attention of the Health and Local Government Department is invited to P.L.A's opinion No. 11378, dated the 28th November 1947 and No. 2106, dated the 2nd March 1948. Since Mr. Deshmukh was disqualified on the date of nomination by reason of his being an officiating Patil, he was ineligible for nomination. The view taken by the Collector is not correct.

d/-

Remembrancer of Legal Affairs;

U.P. to H.& L.G.D. No. 9868 dated the 31st A

1949.

N.V.D.
18/6
4c.

Office of the Pleader

Bombay Village Panchayats Act, 1933 Section 89(2)& (3)

Sub-section (2) of section 89 of the Bombay Village Panchayat Act provides for the levy of all or any of the taxes or fees mentioned in clauses (i) to(vii) thereunder. Sub-section (3) lays down that any person aggrieved by the assessment, levy or imposition of any such tax or fee may appeal to the Standing Committee of the District Local Board. Although sub-section (2) of section 89 provides for the levy of taxes or fees curiously enough in none of the clauses thereunder is any item mentioned for the levy of fees. Reading sub-section(2) with sub-section(3) of section 89, one gets an impression that the terms "taxes" and "fees"s are used as synonymous; but that could not be the intention of the Legislature when there is a well known distinction between taxes and fees and a specific mention of such taxes & fees is made in sub-section (2) and (3) of section 89. To maintain consistency it would be necessary to amend sub-section (2) of section 89 so as to include markets and bazaars in one of the sub-clauses for the levy fee of fees.

rd/-

Remembrancer of Legal Affairs.

U.P. to H. & L.G.L. No. 10813 dated the 27th September 1949.

N.V.D.
18/8
40.

Office of the P.L.A.

Bombay Village Panchayats Act, 1933. Chapter VI, sections 20, 37(5), 61(h) & 50.

The question raised for the P.L.A.'s consideration is whether a sarpanch can sit as a member of the Nyaya Panchayat breach of By-laws or other suits.

Chapter VI of the Bombay Village Panchayat Act, 1933, provides for the constitution and powers of Nyaya Panchayats. A Sarpanch being one of the members of the Panchayat can be elected to the Nyaya Panchayat constituted under chapter VI. Under section 61(h), the Nyaya Panchayat can try offences of breaches of by-laws made punishable under this Act. Under section 50 no member of a Nyaya Panchayat who is a party to, or has any interest in, any suit or case shall sit on the Nyaya Panchayat while it is trying such suit or case. Actions for breaches of by-laws would be taken on behalf of the Village Panchayat and members of the Nyaya Panchayat are not disqualified from sitting on the Nyaya Panchayat for trying such cases. It appears that it is inherent in the scheme of the Act that the members of the Nyaya Panchayat are though members of the Village Panchayat, are not deemed to be interested in actions taken on behalf of the Panchayat and are not disqualified to try them. However, it appears inexpedient to allow a Sarpanch to sit on the Nyaya Panchayat while trying cases for the breach of any of the by-laws or any civil action instituted on behalf of the Panchayat, for under section 20 the sarpanch is the executive head of the Panchayat and since a Panchayat acts through its executive head, namely, the sarpanch, all actions relating to breaches of by-laws and civil claims will have to be taken by the sarpanch on behalf of the Panchayat. It is a general principle that no man can be a judge in his own cause

nor should a man be a prosecutor and a judge in the same case. As stated above, the Sarpanch being the executive head of the Panchayat is required to take initiative for prosecution for breaches of by-laws and institution of civil claims on behalf of the Panchayat and as such he would be a prosecutor. Consequently, it would not be desirable to allow the Sarpanch to sit on the Nyaya Panchayat in such cases. His absence from the Nyaya Panchayat while trying such cases would not work any hardship for under section 37(6), out of the members so elected three members shall form a quorum. It would, therefore be clear that the other members can conveniently try the said cases.

sd/-

Remembrancer of Legal Affairs.

R.V. to U.O. No. 11575 dated the 18th October 1949.

M.V.D.
18/8
49.

Office of the P.L.A.

[illegible] Village [illegible]yats Act, [illegible]

[illegible]

[illegible]A's opinion [illegible]7375 dated [illegible]1949.

[illegible]

The question for consideration is whether the Unit Buildings at Aarey Milk Colony belonging to Government would be liable to pay the house-tax imposed by Village Panchayat, Goregaon.

Attention is invited to P.L.A's opinion Nos. 2411 dated 1st March 1949 and 7375, dated 4th July 1949. In the latter opinion, the D.& L.O.L. was requested to ask the Commissioners to amend clause (a) of rule 2 of the Rules regarding levy of tax on owners or occupiers of houses and lands by Village Panchayats, on the lines indicated in the said opinion. If clause (a) of rule 12 is so amended, under proposed clause (aa) the buildings at Aarey Milk Colony belonging to Government would be exempt from payment of the house-tax levied by the Village Panchayat, Goregaon, even though used for purposes of profit.

sd/-

Remembrancer of Legal Affairs.

V.P. to Milk Comsr., No. 14858 dated the 21st December 1949.

K.V.D.
[illegible]/6
40.

Extract of (ecr. H. and L.G.I's note dated 11-10-1949 below V.L.A's opinion No. 200-L, dated the 10th October 1949.

"It (ems necessary to remove the disability of Harijans from standing for election to Village panchayats, by suitably amending the V.L. Act.

M.V.D.
* 12/6
46.

Office of the [illegible]

The view taken by the [illegible] in its note dated 10.9.1949 is not correct.

2. There is no legal bar to a member of the Home Guards contesting the election to a Local Board or Municipality if Government permits him to do so.

3. In the case, however, of election to a village panchayat or Provincial Legislature, there is legal incapacity imposed upon a member of the Home Guards by section 8(j) of the Bombay Village Panchayats Act, 1933, and section 69(1) of the Government of India Act, 1935, respectively by reason of the fact that he is a servant of the Crown and holds an office of profit under the same. A Home Guard is entitled to a duty allowance under rule 9 of the Bombay Home Guard Rules when he is called out for duty, and his office would be deemed to be an office of profit within the meaning of section 69(1) of the Government of India Act, 1935, and would incapacitate him from standing as a candidate for the election. Mere permission of Government would not cure this legal incapacity under both the Acts. The only feasible course is to amend the Bombay Home Guards Act 1947, providing that a member of the Home Guards shall not be deemed to be a servant of the Crown for the purpose of clause (j) of section 8 of the Bombay Village Panchayats Act, 1933, and that he shall not be disqualified for being elected or for being a member of the Bombay Provincial Legislature merely by reason of the fact that he is a member of the Home Guards.

4. A copy of this opinion is also sent to L.& L.G.D. as there is a proposal to amend the Bombay Village Panchayat Act to enable a Home Guard to become a member of a Panchayat.

sd/-

Remembrancer of Legal Affairs.

G.R. to H.D. No. 13185 dated the 19th November 1949.

D.S.O.

Copy to---

Health and Local Government Department.